

NEW YORK HERALD.

JAMES GORDON BENNETT.

EDITOR AND PROPRIETOR.

OFFICE: N. W. CORNER OF FULTON AND NASSAU STS.

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AMUSEMENTS THIS AFTERNOON AND EVENING.

BROADWAY THEATRE, Broadway, near Broome Street.—(AMERICAN AND BROADWAY—OFF TO FIGHT.)

NEW YORK THEATRE, Broadway, opposite New York Hotel.—(EMERSON.)

GERMAN THEATRE, No. 54 Broadway.—(THE LOVER.)

STREINWAY HALL, East Fourteenth Street, near Irving Place.—(THE WEDNESDAY FOLK.)

DOWD'S HALL, 55 Broadway.—(PROFESSOR HARRIS WILL PERFORM HIS MIRACLES—THE HEAD IN THE AIR—THE INDIAN BATTLE.)

RICHMOND'S ENGLISH OPERA COMPANY, Olympic Theatre, Broadway.—(A DIAMOND.)

SAN FRANCISCO MINISTERS, 55 Broadway, opposite the Metropolitan Hotel.—(THE ETHIOPIAN ENTERTAINMENT, HUNGARIAN, DANISH AND BURGUNDIAN. BLACK COCK AND THE INDIAN BATTLE.)

FIFTH AVENUE OPERA HOUSE, 10th St. and 5th Ave.—(THE INDIAN BATTLE.)

THEATRE DE LA PASTORIE, 10th St. and 5th Ave.—(THE INDIAN BATTLE.)

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A motion to dismiss the case, which was denied by the court. The case is still on.

Judge Davis has decided, in a case in the United States District Court, that the oath of a soldier respecting his age on enlistment in the army shall be regarded as conclusive evidence on the point.

In the Court of Common Pleas yesterday, before Judge Daly, an action was brought by Daniel M. Freeman against Zadock Street for an alleged elopement with his wife, for which he claims \$10,000 damages. The case is still on.

Charles Martin was brought up for examination yesterday before Commissioner Osborn, and charged with the murder of Joseph Green, a colored man, cook of the American ship Galena, on the high seas, on the 16th of November last, while on the voyage from New York to Hamburg. After hearing the facts the Commissioner discharged Martin, the evidence showing that he had committed the act in self-defense.

In the Marine Court yesterday, before Judge Hearn and a jury, the case of Miller vs. Rosenblatt—an action to recover damages for alleged nuisance caused to the plaintiff's house by water flowing from a distillery, the property of defendant—the jury found a verdict for the defendant.

Adolph William Schwarz, an Austrian, was arrested yesterday on board the Bremen steamer, after his arrival from Vienna, charged with having forged commercial bills of exchange in that city to the amount of one hundred and thirty thousand francs.

The case of a man who was argued yesterday before Judge Daly. The summing up of counsel occupied the entire day. Decision reserved.

The market was, on the whole steady yesterday, and closed, with an upward tendency.

There was only a moderate business transacted in the market yesterday. Domestic produce generally ruled dull and lower, while merchandise was to limited request, but quite steady at about previous prices. Cotton was dull and heavy. Coffee was quiet but steady. On Change flour was less active and 10c. a 15c. lower. Wheat sold at a decline of 3c. a 3c., while corn declined 1c. a 2c. Oats were dull and lower. Pork, though low active, ruled firmer. Beef was steady, while lamb was more active and higher. Freight was quiet. Whiskey was dull and nominal. Petroleum was firm. Naval stores were quiet but steady.

MISCELLANEOUS.

Our Rio Janeiro correspondence is dated December 9. The Marquis de Caxias was received with the greatest enthusiasm by the Brazilian army as their new commander. An expedition up the Parana had disclosed the fact that the Paraguayans had been receiving large shipments of arms and munitions of war across Brazilian territory. It was considered probable that the allies would abandon Curuzú and fall back on Tuyuti, which would be equivalent to a retreat. Despatches say that the Paraguayans were suffering terribly from starvation and want of clothing. The United States gunboat Shamokin collided with the steamer General Flores on the Paraguay river on the 10th of November, and the latter vessel was sunk. No lives were lost.

Simon Cameron was chosen Senator from Pennsylvania by the Legislature of that State yesterday, in place of Edgar Cowan, whose term expires on the 4th of March. Charles D. Drake was elected Senator from Missouri and Truman B. Trumbull from Illinois by the respective Legislatures of those States.

Governor Quay was inaugurated at Harrisburg, Pennsylvania, yesterday. In his inaugural address he said that the South must be kept out until all the conditions of Congress are complied with.

The West Virginia Legislature convened yesterday, and Governor Boreman's message was received. The constitutional amendment was ratified in the Senate by a vote of 15 to 3.

The Alabama Legislature reassembled yesterday. The Illinois House of Representatives ratified the constitutional amendment yesterday by a strict party vote.

The first fight that has been talked of for some time among the fancy in this city took place yesterday between Collier and McGillicuddy in Pennsylvania, about nine miles from Harrisburg. Forty-seven rounds were fought, when Collier was declared winner. He is, therefore, the present "champion of the light weights."

In the Hudson County Court, of New Jersey, yesterday, the presiding Judge recommended to the Grand Jury the indictment of all persons who sell liquor on Sundays. Rum drinkers from New York must not be tolerated to disturb the peace and quiet of the State of New Jersey, and the State law, as stringent in its practical effect as the New York Excise law, is to be enforced.

Patrick Kating was tried in the Toronto Court, yesterday, as a Fenian, and was acquitted. John O'Connor was found guilty of larceny and was sentenced to be hanged.

A man named Hatch tried to kill a married woman named Batchelder, with whom he was in love, in Manchester, New Hampshire, on Monday, and then mortally wounded himself. A steel stay in Mrs. Batchelder's dress saved her life.

Two negro boys apprehended at G. Watkins, of Montgomery county, Md., their former master, and from whom they had run away, were returned to him on Monday by Judge Wylie, of the Supreme Court at Washington. The evidence went to show that Watkins had treated the children shamefully, and that their mother had died from sheer neglect and hunger.

A tenement house was burned in New Haven yesterday, from which six families barely escaped with their lives.

Five stores in the town of Ingersoll, C. W., were destroyed by fire yesterday.

Twenty-one young negroes have been shipped from the South by General Howard to Hartford, Conn.

The Late Decisions of the Supreme Court.

Their Political Application.

The two decisions pronounced in the Supreme Court of the United States on Monday last—the one upholding the test oath of loyalty to the State constitution of Missouri in reference to clergymen, teachers and lawyers, and the other declaring unconstitutional the test oath of Congress as applied to attorneys seeking admission to practice before the Supreme Court—are of the highest importance in their political application. This court, as in the Milligan decision, five to four, has thus decreed that the Missouri State constitution in its test oath of loyalty is an *ex post facto* law, and in effect a bill of attainder, and therefore null and void. On the same general grounds the test oath of Congress is declared invalid, with these additional objections, that lawyers holding no specific appointment are not officers of the United States, and therefore not subject to its Congressional oath, and that, while the President's pardoning power is unlimited, his pardon restores the person concerned to his full rights of citizenship. For example, an Executive pardon to Jeff Davis would render him at once eligible for the next Presidency, reinstating him in the political position in which he stood as a loyal citizen before he went over into the treason of the so-called Confederate States.These decisions result from the concurrence in opinion of Justices Field, of California; Clifford, of Maine; Nelson, of New York; Grier, of Pennsylvania, and Wayne, of Georgia—five. The dissenting opinion delivered by Justice Miller, of Iowa, was supported by Chief Justice Chase and Justices Swayne, of Ohio, and Davis, of Illinois. They hold that the Congressional test oath is not an *ex post facto* law nor a bill of attainder, but "a qualification which Congress has a right to prescribe as necessary to an attorney," and that "the pardon of the President has no effect in relieving him from the requirement to take it." In regard to the Missouri case these dissenting judges hold that, "no restraint is placed on the action of the State," but that, "on the contrary, in the language of Story (Commentaries on the Constitution), the whole power over the subject of religion is left exclusively to the State government, to be acted upon according to their own sense of justice and the State constitution." Who decides when such doctors disagree? The

majority—and here the majority, though only one—in both cases goes with the Milligan decisions; and all these decisions, while they remain unversed, are the supreme law of the land.

What, then, is the bearing of these decisions upon the all important question of Southern reconstruction? According to the Milligan decision there can be no exigency in the government justifying an overstepping of the strict landmarks of the constitution. This pronounces the conduct of President Lincoln in assuming the powers of Congress, in the absence of Congress, "to raise and support armies" to save the life of the nation unjustifiable. As the old Pharisees held that man was made for the Sabbath and not the Sabbath for man, so this Milligan decision affirms that the country was made for the constitution and not the constitution for the country. According to these two later decisions neither Congress nor any State can establish any qualifications of loyalty bearing upon the participants in the late rebellion short of a regular trial and conviction. This may be a strict interpretation of the constitution; but as a party accused of treason must be tried in the district where the overt act was committed, and as under this requirement no jury can be found to convict, how is Congress to make any discriminations between loyal citizens and rebels in the work of Southern reconstruction?

There is a remedy suggested in Mr. Justice Miller's dissenting opinion upon these two late cases, and in the case which he recites, of an appeal to this Supreme Court from a fine imposed upon a Catholic priest of New Orleans for violating a local ordinance relating to funeral rites, restricting them under the penalty imposed to the Obituary chapel. Upon this appeal the Supreme Court of the United States replied that "the constitution makes no provision for protecting the citizens of the respective States in their religious liberties. This is left to the State constitution and laws. Nor is there any inhibition imposed by the constitution in this respect on the States." This late decision touching the test oath applied to a Catholic priest in Missouri reverses this former decision; and here lies our remedy. The decisions of the Supreme Court are not binding upon the court. If, therefore, the latest decisions of that body are all tending to the conclusion that the late war for the Union was not only a failure, but a blunder, which has left us constitutionally just where we stood the year before the war, we have only to reconstruct the court in order to reverse these decisions and to secure such interpretations of the constitution as will proclaim the great fixed fact that the war for the Union was neither a blunder nor a failure, but a great revolution, the issues of which have become the constitution to the Supreme Court.

This is one remedy, and there is some reason to suspect that it is the remedy contemplated in Congress in the proceedings instituted for the President's impeachment and removal in order to reach this court. But there is still another remedy. It lies in the pending constitutional amendment. Upon this platform, in the name of General Grant, as the candidate of the Union war party, we are content to leave the existing deadlock between Congress on the one hand and the President and Supreme Court on the other to the verdict of the people in 1868. But is there not the danger in the interval that the Supreme Court may proclaim some other decisions interdicting all further proceedings in the way of Southern reconstruction? We cannot tell. We apprehend, however, that this court, with every decision running in the channel of its last three, is strengthening the impeachment party in both houses of Congress.

The Hon. Mr. Loan's Attack Upon the President.

The speech delivered in Congress on Monday last by Mr. Loan, of Missouri, in which President Johnson was directly charged with complicity in the assassination of Abraham Lincoln, was evidently nothing but the attempt of a radical politician, with more ambition than brains, to emulate the notoriety of Butler and Stevens. In all legislative bodies weak men are to be found who are restless under the obscure position to which they are naturally assigned, and who are prepared to go to any length in order to create a sensation and bring themselves into temporary notice. The Missouri Congressman is a specimen of this class; but he would in all probability have failed in attracting any attention if a republican Representative from this State had not raised a point of order and denounced his baldheaded, as disgraceful to the House and injurious to the character of the government at home and abroad.

This border ruffianism in Congress can damage no person except the radicals themselves. Everybody knows that the charge made by Mr. Loan is entirely unfounded, and absurd. The abuse formerly heaped upon President Johnson by the secessionists and their followers for the stern determination with which he carried out the extreme sentence of the law upon the criminals who are represented as his accomplices is only equalled in vindictiveness by the attacks now made upon him by the ultra radicals. There is probably not one living man in the nation who seriously believes the accusation made by Mr. Loan. But that is no reason why his disgraceful and reckless language, uttered on the floor of Congress, should be suffered to pass unchallenged. The Speaker decided that he was in order, and the House chose to lay an appeal from that decision on the table by a large majority, thus virtually sustaining the chair, although evading a direct vote upon the issue. But while the license of debate is wide, it is a settled parliamentary principle that a member is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. Whatever is spoken in the House is subject to the censure of the House. In the case of Mr. Loan the words used become more serious because they were deliberately written and read from the manuscript, instead of being uttered in the inconsiderate heat of debate. He should be required to produce some evidence to show that he had reasonable grounds to believe in the truth of his charges against the President of the United States, and that they were not made in the spirit of a reckless demagogue, without any foundation to rest upon, or receive the severe censure of the House. Mr. Hale, who protested so strongly against the assault upon the Executive, and who is well known as an opponent of President Johnson, should introduce such a resolution and put it to a test vote without delay.

Yesterday's Elections to the United States Senate.

Our State Legislature yesterday, in pursuance of the act of Congress as to the time and method, and of the late republican caucus as to the man, elected Hon. Roscoe Conkling to the United States Senate for six years from the 4th of March next, in the place of Harris, whose term expires. The joint majority of Conkling was fifty-eight, a strict party vote, State Senator Henry C. Murphy being the democratic nominee. Mr. Conkling is a radical; but we guess the circumstance which turned the scale in his favor against all other radicals was that for some cause or other he had become particularly obnoxious to the firm of Seward, Weed & Company. New York, at all events, will have after the 4th of March at least one Senator who can take a hand in the debates of that body, which is perhaps a point gained to the advantage of the State.

In the Pennsylvania Legislature, under the regulations aforesaid, the Hon. Simon Cameron, republican, was elected to the Senate for six years from the 4th of March, in place of the incumbent, Mr. Cowan, who has fallen through in going over to the administration platform. But "Old Thad Stevens" and Forney have also had their noses put out of shape in Cameron's election. Cowan was too slow and Stevens was too fast, and so the middle course was adopted with Cameron.

In the Missouri Legislature the republican caucus nominee, Charles D. Drake, a decided radical, received a vote, including both houses, of 112 to 47 for all others, including 32 votes for General Francis P. Blair, Jr. Blair was a good fighting Union soldier during the war; but under the lead of the old gentleman of Silver Spring he has got on the wrong track for radicalized Missouri. Drake, on the 4th of March, takes the place of Senator Brown, radical.

In Illinois Senator Trumbull, a moderate radical, has been re-elected by a total vote of 76 against 33 for Dickey, the democratic candidate. The Union democracy went under in 1860, and in the last November election they were buried under an adverse popular majority of nearly sixty thousand.

There were several ballots in the Kentucky Legislature to elect a United States Senator in place of Garrett Davis, whose term expires on the 4th of March. The last vote, combining that of the two houses, is thus classified:—For Powell, democrat, 7; Pratt, Union, 41; Davis, conservative, 34; Harding, 15; Hise, democrat, 5; Randall, Union, 31. As we understand it these Union men mean the supporters mainly of President Johnson's policy, those set down as democrats represent the returned rebel element, and the conservatives are "aristocrats"—half administration and half rebel. The result will be the election of one of the Union candidates of the administration school over the Kentucky democrats and conservatives, such as they are.

As far as these Senatorial elections have gone, including Connecticut, the radicals have gained two, and, if they can get in Nebraska and Colorado, they will be stronger in the Senate of the Fortieth Congress by five or six than they are in the Thirty-ninth.

War in Japan—President Johnson's Proclamation.

Hostilities have actually commenced between the Daimies of Lucon and Nazato and the Tycoon of Japan. In anticipation of these hostilities and in order to secure the strict neutrality of citizens of the United States residing in or visiting the empire of China and Japan, a notification was issued on the 4th of August last by the United States Legation in Japan, through the consulates of the open ports of that empire, requesting American shipmasters not to approach the coasts of Lucon and Nazato. It has now become necessary for the United States Minister Resident in Japan to issue a regulation forbidding American merchant vessels, under pain of forfeiture, from stopping or anchoring at any port or roadstead in that country, except the three open ports of Kanagawa, Nagasaki and Hakodadi. We publish to-day a proclamation of the President of the United States sanctioning and calling special attention to this regulation. It is to be hoped that no violation of it may lead to the closing of ports opened to the commerce of the civilized world at so much expense and trouble, and involve the United States government in the ugly internal war which is now raging between the Tycoon and the Daimies.

Suffering in the South.

A despatch from Raleigh, North Carolina, gives a deplorable account of the sufferings of the people in that locality. The general poverty that prevails among the community has been rendered more calamitous through the long continuance of severe weather. Women and children were frozen to death and starved to death, and the funds of the Young Men's Christian Association, which have been used to afford partial relief, are now exhausted. In this terrible condition of affairs, we are told, the masses have grown apathetic on political questions and cry out to Congress only to give them a chance to keep themselves alive and get on their feet again. North Carolina has been less affected by the war, probably, than any other secession State except Texas. The story told of her present trials and sorrows does not present half the horrors that can be related of other States. Governor Patton has just been in Washington, not to talk about politics, but to beg eighty thousand dollars of the government to save the poor of Alabama from perishing through starvation. If our philanthropists will only turn their eyes towards the Southern States they will find objects of charity enough without sending their money away for the relief of foreigners. The people who are undergoing these sufferings have only their "fortune-hunting politicians" and party leaders to thank for them. The men who brought starvation and misery upon them are now inciting them to reject the proposition held out by Congress as a settlement of their troubles. Temporary relief may be obtained by loans from the government or donations from the humane; but the people of these afflicted States, if they desire restored prosperity and happiness, must take their political affairs into their own hands. Let them reject the counsels of their "fortune-hunting politicians" and accept the settlement offered to them by the North, and, with established peace and security, they will soon share in all the blessings enjoyed by the loyal States.

THE CONGRESSIONAL UNDER THE PROTECTION OF THE POLICE.

The members of the Board of Commissioners were considerably exercised on Monday

day because their legislative hall was enveloped by the appearance of a large police force.

Some of them took umbrage at their presence, while others seemed rather more comfortable at the assurance of protection against assault and battery which the contiguity of blue coats, brass buttons and batons afforded.

There can hardly be any objection to the police being in the Council Chamber so long as the members make that place the arena of breaches of the peace with such weapons as inkstands and pistols. It is the duty of the police to see that the peace is preserved everywhere throughout the city. The violation of law is just the same whether it occurs in the Chamber of the Common Council or in the City Hall Park. The best way to get rid of the grievance, if it is so regarded, is for the members of the Common Council to conduct themselves properly. Then they will not require the police to keep order among them, and save them from getting broken heads while they are making laws for the government of the city.

Growth and Tendency of Musical Art in New York.

A few years ago the opera was all the rage in New York; but since we have lost the fine artists and good management which stimulated and cultivated the taste for operatic performance at that time, musical entertainments of another character have become fashionable.

The importation of inferior artists and bad management had led our music-loving people to look for amusement elsewhere than at the opera. Fine music halls have sprung into existence, and our people go to them to hear the gems of the great composers and masters. Concerts of a high order, in which the best and most classical music may be heard, have taken the place of the opera in a great measure and are fast superseding it in the estimation of the public. The way in which the entertainments at the Irving and Streinway Halls are patronized and the failure of the opera lately at one of the large theatres show this to be the case. There is room for more of these places, at least for another grand hall. We should like to see the Chickering, who make the best pianos, show their enterprise in erecting the finest and grandest hall in the city. We are in no way exclusive, and favor art and enterprise wherever it may be found; still we think our native born citizens, where they have the ability and means, should not allow themselves to be eclipsed by foreigners or foreign born citizens. Taste and cultivation in music, as in other arts, are spreading rapidly. Before long we shall rival the classic countries of old Europe in this art, as we are rivaling them in others. The erection of fine music halls contributes greatly to this result. The crowds that attend those already referred to show that a grander and more attractive hall, in a suitable location, would be more successful. We recommend the eminent American pianoforte manufacturers we have named to study the tendency and growth of musical taste in New York and to build the finest music hall in the country.

NEBRASKA AND COLORADO.—The House of Representatives yesterday passed the bills from the Senate for the admission as States of Nebraska and Colorado, with the condition precedent to the President's proclamation of their admission that they shall adopt the platform of equal suffrage, regardless of color—the discriminating word "white" being in their present constitutions. The upshot of these bills will probably be the failure of both with a failure to pass them over a veto.

MEXICO.

TELEGRAM TO THE HERALD.

Manifestation Determined to Collect His Share of the Vera Cruz Customs Dues as Well as the French-Trying Possession of Merchandise at that Port.

New Orleans, Jan. 15, 1867.

Your Havana correspondent writing on the 13th inst., states that the steamer Robert had arrived at Havana from Vera Cruz, bringing dates to the 24th.

Manifestation demands duties on all goods in the Vera Cruz Custom House, even though they have already been paid to the French. He tells the merchants that the goods cannot be taken away before the duties are paid to his collector, unless the owner gets the French troops to assist them in taking the goods by force.

Mr. D. L. Lane, United States Consul at Vera Cruz, is expected to arrive here very soon. He comes to confer